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1 HIGHLY CONFIDENTIAL - JOHN VARLEY
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 - - - - -

5 In Re:
6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)
8 HOLDINGS, INC. et al., (Jointly Administered)

9 Debtors.

10 - - - - -
11 HIGHLY CONFIDENTIAL
12 DEPOSITION OF JOHN VARLEY

13 Thursday, September 3, 2009
14 At: 12:00 pm

15 Taken at:

16 Barclays
1 Churchill Place
17 London
18 United Kingdom

19 Reported by: AILSA WILLIAMS
20 Certified LiveNote Reporter
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22
23
24
25

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2 APP E A R A N C E S

3 JONES DAY, LLP

4 Attorneys for Lehman Brothers, Inc.

5 222 East 41st Street

6 New York, NY 10017-6702

7 BY: JAYANT W. TAMBE, ESQ

8 BRIDGET CRAWFORD, ESQ

9 BOIES, SCHILLER & FLEXNER, LLP

10 Attorneys for Barclays Capital and the

11 Witness

12 5301 Wisconsin Avenue N.W

13 Washington D.C 20015

14 BY: JONATHAN M. SHAW

15 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES,

16 LLP

17 Attorneys for the Creditors Committee

18 16 Old Bailey

19 London, United Kingdom, EC4M 7EG

20 BY: MATTHEW BUNTING, ESQ.

21 HUGHES, HUBBARD & REED, LLP

22 Attorneys for the SIPA Trustee

23 1775 I Street, N.W

24 Washington D.C. 20006-2401

25 BY: JOHN F. WOOD

Also Present:

PHILIP E. KRUSE: Alvarez & Marsal

GREG BARDEN: Jones Day

DEBORAH COOPER: Barclays

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2 potential avenues, of which Lehman was one.

3 This was, as I say, a high level
4 strategic review, where the premise was: If it
5 should become possible to do a transaction with
6 Lehmans, do you, the board feel, as I the Chief
7 Executive feel, that this would be a good way of
8 implementing the strategy?

9 Q. And at that June 2008 discussion were
10 any materials submitted to the board analyzing
11 Lehman's business and the nature of that
12 opportunity?

13 A. You may well need to refresh my memory
14 on that point. I presume that there were some
15 board materials tabled at that time but I don't
16 have a clear recollection of what they were, but
17 as an example we might have tabled for the board:
18 This is what the Lehman's business looks like.

19 Here is public disclosure relating to Lehman's.
20 This is where its people are. This is where its
21 earnings are derived from, and so on.

22 Q. I can't refresh your recollection on
23 that. I don't think we have any materials from
24 that time period. The reason I ask the question
25 is that type of discussion with the board, where

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2 it got to that level of specifics, Lehman was
3 discussed, that would have been done with the
4 benefit of at least some written materials?

5 A. I should not indulge in idle speculation
6 and I have a fallible memory.

7 Q. You have been well trained for the
8 deposition. Go ahead.

9 A. So, if I then go to in a sense the more
10 proximate to the transaction part of your
11 question --

12 Q. So we left June behind?

13 A. We left June behind, and I do not recall
14 precisely whether between June and the middle
15 of September there was any -- there was certainly
16 no lengthy discussion of the Lehman opportunity at
17 the one board meeting that took place between June
18 and mid-September, but certainly it is possible I
19 think that we may have said that the Lehman
20 situation appeared to be deteriorating. Then, and
21 again I don't have precise recall, there were
22 various board discussions in the run up to
23 a telephone meeting of the board that we had on
24 the Sunday.

25 Q. The Sunday before the bankruptcy filing?

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2 A. Yes, so I think I am talking about
3 Sunday 14 September, I believe, and I think there
4 may also have been a further telephone meeting of
5 the board on the Tuesday or the Wednesday,
6 probably the Tuesday, given that we made, as you
7 know, an announcement on the Wednesday.

8 Q. Let's take those two events in turn.

9 The Sunday board meeting, by Sunday 14 September
10 you already had a due diligence team that was
11 doing a fairly deep dive into Lehman's books.

12 Correct?

13 A. We did.

14 Q. And you had made some initial I guess
15 conclusions about assets that you found attractive
16 and assets that you did not want to purchase at
17 all. Is that fair?

18 A. Well, we had concluded some initial due
19 diligence and had a point of view. If I can just
20 back up for one moment, it will be a convenience,
21 if you are prepared to allow it, for me to refer
22 to the transaction that we were looking at on the
23 Saturday and the Sunday as Lehman one.

24 Q. That would be helpful.

25 A. The transaction that we announced on

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2 Wednesday as Lehman two and the transaction that
3 we implemented as Lehman three.

4 Q. That is very helpful.

5 A. If that helps.

6 Q. No, that is very helpful.

7 A. The due diligence that we were doing at
8 the back end of the week before the bankruptcy
9 filing, that due diligence was aimed at Lehman
10 one. We had identified a number of areas where we
11 felt that the valuations applied by Lehmans to
12 their balance sheet were optimistic. Now, you
13 will conclude whether that coincides with your
14 description, but that would be my description.

15 Q. Let's drill down a little bit more,
16 because my understanding is not only you had
17 identified these assets where you found Lehman's
18 valuations to be optimistic, maybe overly so, but
19 you had then taken the next step of listing them
20 as excluded assets in any contemplated
21 transaction?

22 A. Um hum.

23 Q. Is that fair?

24 A. What we did, and here I am recalling
25 a set of conversations that we had with the US

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2 administrations in its various guises, we
3 indicated that we would not be able to, we would
4 not be prepared to proceed with Lehman one if
5 certain assets came with the Lehman one
6 transaction.

7 Q. Just to be clear on the record, you are
8 talking about discussions you had with the US
9 Government, about the role the US Government might
10 play, if any, in the Lehman one transaction?

11 A. Yes.

12 Q. And you were discussing a backstop or
13 some kind of a Government facility that would in
14 effect cover the risk of loss on those assets that
15 you would exclude from your transaction?

16 A. As I recall it, we were looking at two
17 particular areas. One was a set of assets that we
18 didn't want to acquire, and two was the
19 guaranteeing for the period between announcement
20 and closing, which could have been a period of
21 several months, the guaranteeing of the trading
22 liabilities of Lehman's through that period.

23 In a sense we were indifferent to how those
24 particular steps were procured, whether by the US Government
25 as principal or whether by the US Government as agent with

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2 other principals, but we were clear going into the Lehman
3 one transaction that the Lehman one transaction, if it would
4 be executed by Barclays, would have to have those features.

5 Q. And the period of time that you

6 described between signing up the agreement and the
7 closing of the transaction, was that a function of
8 the approvals that you needed to obtain from your
9 shareholders?

10 A. Partly, but partly regulatory approvals
11 and partly the sheer complexity of a transaction
12 of that size. I mean, my recollection is that the
13 Lehman's balance sheet was, you know, two-thirds
14 of a trillion dollars. There was a lot of
15 complexity in it. Any transaction involving such
16 an acquisition takes time to close, as you know.

17 Q. I just want to drill down this
18 two-thirds of a trillion dollars number, just
19 because there is a lot of zeros that end up flying
20 around here. That is what, \$600 billion?

21 A. My recollection is that the Lehman
22 balance sheet on the Friday night before Lehman
23 went into administration, the gross balance sheet
24 was about \$670 billion.

25 Q. And the Lehman one transaction that you

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2 the need to have a substantial discount.

3 Q. Do you recall a discussion on Friday,
4 the 19th, where some of the folks that report to
5 you reported to you that maybe there was not
6 enough cushion or delta because of the assets that
7 in fact had been transferred over, and therefore
8 there was a need to obtain additional assets? Do
9 you recall any discussion like that?

10 A. I don't, no.

11 Q. Do you know whether Barclays acquired
12 any assets other than the assets that were
13 transferred from the Fed repo to Barclays?

14 A. I don't know whether we did or whether
15 we didn't. I would be surprised if we did.

16 (Exhibit 338A marked for identification)

17 Q. This is number 338A. I have placed
18 before you a document marked 338A. It is a real
19 short e-mail. If you can just let me know when
20 you are done reviewing it, we can talk about it
21 briefly.

22 A. Thank you, yes.

23 Q. This is an e-mail to you from Jeff Rosen
24 at Lazard. Do you see that?

25 A. Yes.

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2 Q. Is Jeff Rosen someone you had been
3 communicating with over the weekend in connection
4 with the Lehman one transaction?

5 A. My recollection is imperfect. We have
6 a number of advisers. Lazard, of whom Jeffrey is
7 a senior director, often advised us on
8 transactions. Actually, my recollection is that
9 we did not engage them or seek their advice on
10 this transaction, but as you will know that
11 doesn't always prevent investment bankers trying
12 to advise you on a transaction.

13 Q. So there is no mystery, Lazard was an
14 adviser to Lehman in the transaction.

15 A. Um hum.

16 Q. Does that help your recollection?

17 A. It would certainly confirm that we
18 didn't retain them ourselves.

19 Q. That is why I am just trying to figure
20 out why Mr. Rosen is contacting you and
21 Mr. Diamond directly on the morning that Lehman
22 filed for bankruptcy.

23 A. Because he is the relationship lead
24 under Bruce Wasserstein at Lazard, and in the
25 ordinary course of any three-month period he would

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2 quite often ring me to talk about what is going on
3 in the market, and this was such a call.

4 Q. Okay. Do you recall having a discussion
5 with Mr. Rosen following this e-mail?

6 A. Do you know, I don't think I did have
7 a conversation with him actually.

8 Q. Do you remember having a conversation
9 with anyone else from Lazard in connection with
10 the Lehman transaction?

11 A. I don't.

12 (Exhibit 339A marked for identification)

13 Q. Sir, I have placed before you a one page
14 document marked Exhibit 339A. Take a moment to
15 look at it, let me know when you are done.

16 A. Thank you.

17 Q. Do you recognize this as an e-mail that
18 you sent to I guess the senior leaders at the bank
19 announcing the Lehman two transaction?

20 A. I recognize it as a communication that
21 I sent to the senior leaders of the group. It was
22 not announcing a Lehmans two transaction. It was
23 indicating the possibility of a Lehmans two
24 transaction.

25 Q. In the second paragraph of your

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2 announcement you make a reference to the
3 "opportunity to purchase what we regard as the
4 good parts of the investment bank (including
5 people, infrastructure and licenses) without
6 having to take on any exposure to the bad parts".

7 Do you see that?

8 A. I do see that, yes.

9 Q. Was that basically the formula you
10 followed in coming up with the Lehman two
11 transaction?

12 A. Although I didn't do it explicitly
13 there, what I was seeking to do, remember that
14 they had been hearing in the media about the
15 Lehman one transaction, was to juxtapose Lehman
16 one and Lehman two, in other words this was
17 a transaction which was smaller, where we could be
18 more selective. That was the point that I was
19 seeking to make by that remark.

20 MR. SHAW: Is this a logical time for
21 five minutes?

22 MR. TAMBE: Yes, we can break now.

23 (A short break).

24 (Exhibit 340A marked for identification).

25 Q. I have handed you a 2-page document

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2 marked Exhibit 340A. Take a moment to review it,
3 let me know when you are done.

4 A. Thank you.

5 Q. This is an e-mail to you from Mark
6 Merson. Do you see that?

7 A. Yes, it is, yes.

8 Q. This was in preparation for the call
9 that you had with analysts on 17 September,
10 correct?

11 A. Correct.

12 Q. This collection of bullet points, are
13 these issues that you had discussed with
14 Mr. Merson to develop this list of talking points?

15 A. No, I had not.

16 Q. So this is something that he would have
17 prepared for your review?

18 A. Yes.

19 Q. He says in the introduction to his
20 e-mail: "John, as we agreed..."

21 A. Um hum.

22 Q. Had you had a discussion with Mr. Merson
23 about the points he was going to address in this
24 draft?

25 MR. SHAW: Asked and answered.